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TITLE XI GUARANTEED LOAN PROGRAM

OCTOBER 2 (legislative day, SEPTEMBER 24), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 5833]

The Committee on Commerce, Science and Transportation, to which was referred the bill (H.R. 5833) to improve certain maritime programs of the Department of Transportation and the Department of Commerce, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF THE BILL

The economic depression in the maritime and fishing industries, and the readily available title XI loan guarantees for members of these industries under the Merchant Marine Act of 1936, has led to severe financial strain on the Fishery and Federal Ship Financing Funds. The purpose of H.R. 5833, as reported, is to alleviate this burden by: (a) Giving the Secretary of Transportation and the Secretary of Commerce authority to assume responsibility for defaults on title XI loan guarantees; and (b) providing much stricter criteria for approving loan applications. These new criteria for approval include a more extensive evaluation of the financial condition of applicants as well as an assessment of the applicants' need for equipment in their specific trades.

BACKGROUND AND NEEDS

In 1936, Congress passed the Merchant Marine Act, including title XI, thereby establishing the Federal Ship Financing Guarantee Program. Construction and reconstruction of American flag vessels in U.S. shipyards was badly needed but Federal funds were limited. The original purpose of title XI was to encourage the private sector to provide loans to the shipping industry at low risk during the

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Depression. By authorizing the Federal Government to insure the mortgages and loans made to the shipping industry, Congress made banks a proposition so attractive that in subsequent years, these loan guarantees would nearly bankrupt the funds set aside to insure the loans made to shipping companies.

Congress amended the law in 1972 to make the Federal Government more directly responsible for debt obligations. The Government was to insure full payment to the lender in case of default and hold the mortgage on equipment purchased through this program.

The Federal Ship Financing Guarantee Program is administered through the Federal Ship Financing Fund. Executors of the Fund are responsible for all of the administrative expenses of the program, including advance payments to avoid default on loans, payment of principal and interest on loans which have entered default, and underwriting programs. The Fund receives its income from insurance premiums and fees obtained from the Loan Guarantee Program, interest on U.S. securities, and repayment and interest on advances.

The Secretary of Transportation and the Secretary of Commerce are authorized to approve applicants for participation in the loan guarantee program. Before such approval is granted, the Secretary must determine whether the applicant is responsible and has the necessary experience, ability, economic resources, and other qualifications to adequately maintain payments as well as the property. The applicant must be a U.S. citizen. Under title XI, owners of vessels and facilities may apply to the loan guarantee program in a number of forms including notes, bonds, or bank loans. These loans may be used to finance a variety of facilities or vessels to be used for passengers, cargo transport, fishing, tankers, barges, towboats, dredges, floating dry docks, research and instruction purposes as well as ocean thermal energy conversion facilities and plant ships, and pollution control, treatment, and abatement vessels.

The Secretary, after approving an applicant for participation, must make arrangements to agree on preferred mortgages, equity investment, reserve funds, bond guarantees issued by obligor, and other security arrangements. All collateral security is the Secretary's direct responsibility, the primary security being the property itself.

Under current law, if the obligor defaults under a title XI guarantee, the Secretary must pay the *total* principal and interest within 30 days of the lender's request for payment, except if the Secretary determines there has been no default or the default has been averted. The Secretary must also pay off bondholders before foreclosing on vessel or facility mortgages. Unless the obligor sells the property promptly, the Secretary must bid for the vessel or facility at an admiralty foreclosure sale, take the title or property, and the attempt to sell to other U.S. operators.

The requirements for quick repayment in default situations, as well as the increasing number of defaults due to the economic depression of the maritime industry, have placed enormous strain on the Federal Ship Financing Fund and made it increasingly difficult for the Secretaries to meet the obligations they have agreed to. At the present time, there is a total of $7.8 billion in outstanding guaranteed loans for the industry as a whole. The Fund itself has $92 million in outstanding loans with an expected additional $55 million by the end of this fiscal

year. The industry defaults over the past 1½ years required the Maritime Administration to pay $172 million to offset these obligations. The Department of Commerce's National Marine Fisheries Service reports that the Fishery Fund has $231 million in outstanding obligations with $26.8 million in liquidation. Their Fund, however, has only $1 million to cover this debt. Over the past 3 years, the Fund has borrowed almost $18,400,000 from the Treasury to alleviate this burden.

H.R. 5833 is a response to this growing pressure and would create alternative payment structures and more stringent and appropriate eligibility requirements that are necessary to streamline operations and reestablish the long-time stability of the loan program.

Summary of the Bill

H.R. 5833 would provide the Secretaries of Transportation and Commerce the authority to assume the obligation when an obligor defaults on a loan guarantee under title XI of the Merchant Marine Act, 1936.

H.R. 5833, as amended in Committee, would expand the criteria the Secretary of Transportation must consider before approving a loan application to include an evaluation of the economic soundness of the applicant, the need for the equipment in a particular trade, and the need for technological improvements.

The bill as amended would require that the fee charged obligors reflect their credit worthiness.

H.R. 5833 includes several amendments to the Shipping Act, 1916 and Shipping Act, 1984 to correct technical errors and conform to Congressional intent.

Estimated Cost

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 6, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 5833, an act to improve certain maritime programs of the Department of Transportation and the Department of Commerce, as ordered reported by the Senate Committee on Commerce, Science and Transportation, August 8, 1984. Although we expect that this act could result in some savings to the federal government, it is not possible to quantify precisely these savings because of the uncertainty of several variables, including potential defaults on loans as well as the future sale prices for vessels guaranteed by the Departments of Commerce and Transportation. The act would have no impact on the budgets of state or local governments.

H.R. 5833 amends a program established by Title XI of the Merchant Marine Act, 1936, which authorizes the Secretary of Transportation to guarantee obligations to finance or refinance the construction, reconstruction or reconditioning of U.S.-flag vessels in domestic shipyards, and provides the Secretary of Commerce similar authority with respect to fishing vessels and facilities. Guarantees are issued under this program through the Federal Ship Financing Fund. The fund receives income from interest on U.S. securities, insurance premiums on construction loans and mortgages, repayment of advances to owner/operators, and interest on these advances. The fund incurs costs for administrative expenses, advance loans to owner/operators to avert possible defaults on guaranteed loans, and payments of principal and interest claims to lenders for defaults. Historically, the fund's annual activity has resulted in net receipts, although in fiscal year 1983 obligations exceeded receipts by $21 million for the two agencies.

The act provides the Secretaries of Commerce and Transportation with an additional option in the case of a default of a guaranteed loan on a vessel. Under current law, if a default occurs, the Secretary must promptly pay the unpaid principal and interest owed the lenders. The Secretary then bids for the vessel at a foreclosure sale, takes title to the vessel if the bid is successful, and attempts to sell it to other U.S. operators. H.R. 5833 gives the Secretary the additional authority to assume the payments of the ship owner to the lenders until other arrangements can be made, such as selling the vessel with existing Title XI financing to another operator. This action could result in savings to the government because the vessel could be easier to sell under the original financing arrangements, especially if interest rates have risen. It would also improve cash management because the Title XI fund would not be required to pay off the entire outstanding debt at one time. The potential savings could result from higher sales prices for vessels or higher earnings by the fund because of improved cash management.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

Since the primary purpose of this legislation is to make mandatory the criteria for consideration of title XI loans which are already being considered (at the Secretary's discretion), it is anticipated that the legislation will not expand the number of people or companies regulated, nor would it alter the economic impact of the title XI program or its administration. Similarly, there is expected to be no increase or decrease from the current level regarding personal privacy impacts.

Because discretionary criteria are now made mandatory, even though the actual workload is not expected to increase, there may be some slight increased level of paper work required within the DOT in evaluating title XI loan applications. There should be no increase

in the amount of paper work or regulations affecting the public, since the information necessary to consider loan applications and to meet the criteria set forth in H.R. 5505 is already required to be submitted under regulations.

A second purpose of H.R. 5505 is to authorize procedures which would allow the Administration to administer the title XI program more efficiently. Because the legislation would allow the DOT to simply assume payments of the defaulting obligor, rather than pay off the entire sum due and/or purchase the property in question at a foreclosure sale, it is anticipated that there will be a substantial reduction in paper work, both within and without the DOT, and reduced regulation as the Government is no longer forced into time-consuming and expensive procedures. The economic impact in this regard is one of reduced Federal intervention in the private sector, less dislocation, and substantially reduced demands on Federal funds. Again, the impact on personal privacy, and the number of people regulated, can be expected to remain the same. While additional regulations would be developed for title XI foreclosures, those new regulations would replace significantly more numerous regulations necessary to facilitate the procedures presently required by the statutes being amended by H.R. 5505. Thus, there should be a significant reduction in regulations.

Section-by-Section Analysis

SECTION 1

Under section 1 the Secretary of Transportation is provided the tools to more efficiently manage the title XI program, to more carefully scrutinize loan applicants.

Section 1(1) through (5) confirms the validity of a guarantee made by the Secretary when the Secretary has assumed the debt of an obligor in default.

Section 1(6) is based on a proposed rule issued by the Maritime Administration in August 1983. H.R. 5833 would require the Secretary to take into account certain economic criteria in deciding whether to approve a title XI application, including the extent to which construction or reconstruction of a vessel may contribute to overtonnaging, and the real-world likelihood that the vessel will provide a positive economic return. These criteria are to form the basis of application reviews for all segments of the commercial nonfishing fleet.

The problems of over-tonnaging have been particularly accute in the inland barge sectors of the industry, and serve as an incentive for enactment of this legislation. For example, freight rates on the Upper Mississippi have fallen to 10-year lows and there are thousands of excess hopper barges in existence. Many of these barges were purchased by investor groups and overextended and underfinanced companies, many of whom have taken advantage of the availability of title XI guarantees, and favorable tax treatment. In 1982, the Maritime Administration issued 64 percent of its guarantees under title XI to these barges, supply vessels, and towboats.

By providing additional criteria to the Secretary of Transportation to consider in evaluating a title XI application, this new legislation would help ease this excess barge capacity and eliminate the less serious and less capable applicants in the future.

However, to gain the efficiencies necessary to be profitable in the highly competitive river industry, the latest technology is required for the hull and propulsive machinery of the towboats which move the barges. Major technical advances have been made in the design of marine hulls, propellers, nozzles, and in main engine design in order to improve the vessel's efficiency.

Vessels built today, incorporating the most advanced design technology, are the most cost effective and because of that, should be given full consideration when the Secretary is making a determination to commit a title XI guarantee. Concurrent with the improvement in vessel performance have been the strides made by diesel engine manufacturers to reduce fuel consumption and maintenance costs. Accordingly, the Secretary of Transportation should recognize that applications for title XI guarantees covering the construction of inland waterway vessels that incorporate technological improvement (including increased fuel efficiency, reduced manning, improved safety), and that otherwise qualify for said commitment to guarantee, shall be balanced against limitations set forth in section (d)(1)(A)(i) of H.R. 5833. Thus, it would be possible for the Secretary to find that despite existing excess capacity in the inland waterway transportation industry a proposal to build a technologically advanced and/or efficient propelled vessel may still be an economically sound investment eligible for a loan guarantee.

Under section 1(9) through 1(11), the Secretary of Transportation and Secretary of Commerce would be allowed to assume the obligor's periodic payments to bondholders before initiating the foreclosure rather than being required to reimburse bondholders in full. In addition, if foreclosure does occur, another U.S. operator could bid for and take title of the vessel or facility at the foreclosure sale and assume the payments with existing title XI financing. This would spare the Secretaries costly time and expense as they would no longer be required to bid for the property at a foreclosure sale if they did not choose to do so.

Outstanding bonds could also be part of the sale transaction and relieve the title XI funds' obligation to pay off the bondholders in the event of a default. This does not produce any insecurity for the bondholder because the new purchaser automatically assumes the title XI guarantees and thus the bondholder's security is left intact.

Section 1(12) addresses fees charged title XI loan obligors. Existing law now provides for a range of guarantee fees (¼ percent to ½ percent during vessel construction and ½ percent to 1 percent after delivery) to be charged by the Secretary in title XI ship financing. This has been interpreted in Maritime Administration regulations as requiring a range of charges which reflect the financial strength of the borrower. The percentage charged is based on the financial position of the borrower measured by the relationship of long-term debt to equity as reflected in the most recent financial statements filed with the Maritime Administration by the borrower. These existing regulations, therefore, accurately reflect the intent of the act.

Under proposed title XI regulations published in August 1984 the maximum charge would be required in all cases irrespective of the financial strength of the borrower. Since title XI borrowers must pay back market interest rates, the addition of a full 1 percent for the guarantee fee, unrelated to the credit risks involved, will have an adverse impact on the financially stronger companies as well as the title XI program itself. For the financially sound borrower financing a vessel with a $50 million mortgage, going from ½ percent to a full 1 percent annual fee results in an additional annual expense of $250,000, declining over the 25-year life of the mortgage.

The Committee, therefore, added an amendment to section 1104(e) of the Merchant Marine Act, 1936, as amended. The purpose of this amendment is to assure that the Secretary will in the future, as has been done in the past, utilize the range of title XI guarantee fees permitted by law and will not, as has been recently proposed, charge all users of the title XI program the maximum fee permitted by statute irrespective of the credit-worthiness of the user. In the case of delivered vessels, the statutory range is ½ percent to 1 percent of the outstanding debt per annum.

It would be counterproductive to penalize credit-worthy companies which have in the past qualified for the lowest permitted fee by increasing the fee in future financings. There are companies now using title XI financing, as well as many not using the program, which have had difficulty during the recent recession. However, penalizing credit-worthy companies in future financings will not cure past difficulties. For the future health of the ship financing program, it is important that financially sound companies not be driven out of the program.

The amendment would not prevent the Secretary from increasing revenue from guarantee fees within the minimum and maximum permitted by the statute. It will require that the most credit-worthy companies qualify for the lowest allowable percentage as provided for in the act, but does not limit application of the lowest allowable percentage in future title XI financings to companies which have participated in the program in the past.

The amendment also requires that in arriving at the criteria for the scale of fees within the minimum and maximum range, experience with companies which have actually issued title XI guaranteed obligations will be utilized. The intent of this is to prevent the circumvention of this amendment's objective by establishing criteria for the lowest allowable percentage which no user of or applicant for title XI financing could realistically meet.

SECTION 2

Section 2 is a technical correction to section 214 of the Merchant Marine Act, 1936 and deals with the authority of the Secretary of Transportation to subpoena witnesses for investigations. It makes no substantive changes in existing law.

SECTION 3

Paragraphs (1) and (2) of section 3(a) would remove the remaining references to foreign commerce in the 1916 Act. This would leave domestic freight forwarders and domestic marine terminal operators subject to the 1916 Act as "other persons subject to this Act" as that

term is defined in the first section of the 1916 Act. The amendments complete the intended separation of domestic from foreign commerce in the application of the two Shipping Acts. The amendments make it clear that the 1916 Act does not cover foreign freight forwarding operations, They are covered only by the 1984 Act.

Paragraph (3) of section 3(a) corrects a printing error in the 1984 Act.

Paragraph (1) of section 3(b) is a clarification of section 5(a) of the 1984 Act.

Paragraph (2) of section 3(b) corrects an error in section 11(g) of the 1984 Act. It was intended that additional reparations be applicable to violations of section 10(c)(3)—engaging in predatory practices—rather than section 10(c)(4)—negotiating with nonocean carriers.

Paragraph (3) of section 3(b) rewrites the last sentence of section 15 of the 1984 Act to make it consistent in style and form with the other penalty provisions in the act. It also makes it clear that the certification is one that is required by the Commission under section 15(b).

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Section 1103(e), Merchant Marine Act, 1936 (46 App. U.S.C. 1273)

Sec. 1103. (e) Any guarantee, or commitment to guarantee, made by the Secretary under this title shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. *Notwithstanding an assumption of an obligation by the Secretary under section 1105(a) or (b) of this Act, the validity of the guarantee of an obligation made by the Secretary under this title is unaffected and the guarantee remains in full force and effect.*

Section 1104, Merchant Marine Act, 1936 (46 App. U.S.C., 1274)

Sec. 1104. (a) Pursuant to the authority granted under section 1103 (a), the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

* * * * * * *

[(3) financing the purchase of vessels theretofore acquired by the Fund under the provisions of section 1105 and reconditioning and reconstucting such vessel;]

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title that, under the provisions of section 1105:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or
(C) were sold at foreclosure instituted by the Secretary;

* * * * * * *

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time; *or*

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishing [facilities; or] *facilities.*

[(7) financing the purchase of fishing vessels or fishery facilities, the construction, reconstruction, reconditioning, or purchase of which was guaranteed under this title, that are sold at foreclosure instituted by the Secretary, or are sold by the Secretary following purchase at foreclosure, and the reconstruction or reconditioning thereto.]

Any obligation guaranteed under paragraph (6) shall be treated, for purposes of this title, in the same manner and to the same extent as an obligation guaranteed under this title which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title that by their nature can only be applied to vessels.

* * * * * * *

[(d)(1) No commitment to guarantee an obligation shall be made by the Secretary unless he finds, at or prior to the time such commitment is made, that the property or project with respect to which the obligation will be executed will be, in his opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, and no obligation, unless made pursuant to a prior commitment, shall be guaranteed unless the Secretary finds, at or prior to the time the guarantee becomes effective, that the property or project with respect to which the obligation is executed will be, in his opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources.]

(d)(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources.

(2) No commitment to guarantee, or guarantee of, an obligation may be made by the Secretary under this title for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) with respect to, an underutilized fishery.

(e) The Secretary is authorized to fix a fee for the guarantee of an obligation under this title. If the security for the guarantee of an obligation under this title relates to a delivered vessel, such fee shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this Act. If the security for the guarantee of an obligation under this title relates to a vessel to be constructed, reconstructed, or reconditioned, such fee shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this Act. For purposes of this subsection (e), if the security for the guarantee of an obligation under this title relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary. Fee payments shall be made by the obligor to the Secretary when moneys are first advanced under a guaranteed obligation and at least sixty days prior to each anniversary date thereafter. All fees shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe. *Such regulations shall provide a formula for determining the creditworthiness of obligors under which*

the most creditworthy obligors pay a fee computed on the lower allowable percentage and the least creditworthy obligors allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations).

* * * * * * *

(h) Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, *assumption*, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payment of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

SECTION 1105, MERCHANT MARINE ACT, 1936 (46 APP. U.S.C. 1275)

SEC. 1105. (a) In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this title, the obligee or his agent shall have the right to demand, (*unless the Secretary shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default*) at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided*, That the Secretary shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

[(b) In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may notify the obligee or his agent of such default and the obligee or his agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than sixty days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.]

(b) In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may upon such terms as may be provided in the obligation or related agreement, either:

(1) assume the obligor's rights and duties under the agreement, make any payment in default, and notify the obligee or the

obligee's agent of the default and the assumption by the Secretary; or

(2) notify the obligee or the obligee's agent of the default, and the obligee or the obligee's agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or the obligee's agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) in the event of any payment *or assumption* by the Secretary under subsection (a) or (b) of this section, the Secretary shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right, in his discretion, to complete recondition, reconstruct, renovate, repair, maintain, operate, charter or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary.

* * * * * * *

(e) In the event of a default under any guaranteed obligation or any related agreement, the Secretary shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. [In the event the Secretary shall receive through the sale of property an amount of cash in excess of any payment made to an obligee under subsection (a) or (b) and the expenses of collection of such amounts, he shall pay such excess to the obligor.] *In the event that the Secretary shall receive through the sale of property an amount of cash in excess of the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary shall pay the excess to the obligor.*

SECTION 214, MERCHANT MARINE ACT, 1936 (46 APP. U.S.C. 1124)

[SEC. 214. (a) For the purpose of any investigation which, in the opinion of the Federal Maritime Commission or the Secretary of Transportation, is necessary and proper in carrying out the provisions of this Act, any member of the Commission, or any officer or employee thereof designated by it, or the Secretary, is empowered to subpena

witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such books, papers, or other documents may be required from any place in the United States or any Territory, district, or possession thereof at any designated place of hearing. Witnesses summoned before the Commission or the Secretary, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

[(b) Upon failure of any person to obey a subpena issued by the Commission or the Secretary, it or he may invoke the aid of any District Court of the United States within the jurisdiction in which such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Commission or the Secretary, or member officer, or employee designated by the Commission or the Secretary, there to produce books, papers, or any other documents, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Any process in any such case may be served in the judicial district wherein such person resides or wherever he may be found.]

Sec. 214. (a) For the purpose of any investigation which, in the opinion of the Secretary of Transportation, is necessary and proper in carrying out this Act, the Secretary may subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of books, papers, or other documents that rae relevant to the matter under investigation. The attendance of witnesses and the production of books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof at any designated place of hearing. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Upon failure of any person to obey a subpoena issued by the Secretary, the Secretary may invoke the aid of any district court of the United States within the jurisdiction in which the person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring the person to appear before the Secretary, or an employee designated by the Secretary, there to produce books, papers, or other documents, if so ordered, or to give testimony relevant to the matter under investigation. A failure to obey an order of the court may be punished by the court as a contempt thereof. Process in such a case may be served in the judicial district in which the person resides or may be found.

THE FIRST SECTION, THE SHIPPING ACT, 1916 (46 APP. U.S.C. 801)

When used in this Act:

[The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between

the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: Provided, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."]

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

[The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce or the high seas or the Great Lakes on regular routes from port to port.]

The term "controlled carrier" means a common carrier by water operating, offering, or proposing to offer service in the foreign commerce of the United States which carrier is or whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the controlled carrier operate. Ownership or control by such government shall be deemed to exist if a majority portion of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government, or by any person, corporation, or entity controlled by such government. Ownership or control by such government shall be deemed to exist if a majority portion of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government, or by any person, corporation, or entity controlled by such government. Ownership or control shall also be deemed to exist if the government has the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of the carrier.

The term "other person subject to this Act" means any person not included in the term "common carrier by water *in interstate commerce*," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water *in interstate commerce.*

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stock or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means "registered, enrolled, or licensed under the laws of the United States."

The term "carrying on the business of forwarding" means the dispatching of shipments by any person on behalf of others, by ocean-going common carriers in commerce [from the United States, its Territories, or possessions to foreign countries, or] between the United States and its Territories or possessions, or between such Territories and possessions, and handling the formalities incident to such shipments.

The term "independent ocean freight forwarder" means a person that is carrying on the business of forwarding for a consideration who is not a shipper, consignee, seller, or purchaser of shipments to foreign countries.

The term "maritime labor agreement" means any collective bargaining agreement between an employer subject to this Act, or group of such employers and a labor organization representing employees in the maritime or stevedoring industry, or any agreement preparatory to such a collective bargaining agreement among members of a multiemployer bargaining group, or any agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group.

SECTION 16, THE SHIPPING ACT, 1916 (46 APP. U.S.C. 815)

SEC. 16. It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain [transportation by water] *transportation by water in interstate commerce* for property at less than the rates or charges which would otherwise be applicable.

* * * * * * *

SECTION 21(b) OF THE SHIPPING ACT, 1916 (46 APP. U.S.C. 820(b))

(b) The Commission may, to the extent it deems feasible, require any shipper, consignor, consignee, forwarder, broker, or other person subject to this Act[.], to file a periodic, written certification under oath with the Commission attesting to—

(1)–(4) * * *

SECTION 5(a) OF THE SHIPPING ACT OF 1984 (46 APP. U.S.C. 1704(a))

SEC. 5. (a) FILING REQUIREMENTS.—A true copy of every agreement entered into with respect to an activity described [in section 4] *in section 4 (a) or (b)* of this Act shall be filed with the Commission, except agreements related to transportation to be performed within or between foreign countries and agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. In the case of an oral agreement, a complete memorandum specifying in detail the substance of the agreement shall be filed. The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

SECTION 11(g) OF THE SHIPPING ACT OF 1984 (46 APP. U.S.C. 1710(g))

(g) REPARATIONS.—For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this

subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this Act plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by section 10(b) (5) or (7) or [section 10(c) (1) or (4)] *section 10(c) (1) or (3)* of this Act, or that violates section 10(a) (2) or (3), the Commission may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. In the case of injury caused by an activity that is prohibited by section 10(b)(6)(A) or (B) of this Act, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

SECTION 15 OF THE SHIPPING ACT OF 1984 (46 APP. U.S.C. 1714)

SEC. 15. REPORTS AND CERTIFICATES.

(a) REPORTS.—The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memomandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission. Conference minutes required to be filed with the Commission under this section shall not be released to third parties or published by the Commission.

(b) CERTIFICATION.—The Commission shall require the chief executive officer of each common carrier and, to the extent it deems feasible, may require any shipper, shippers' association, marine terminal operator, ocean freight forwarder, or broker to file a periodic written certification made under oath with the Commission attesting to—

(1) a policy prohibiting the payment, solicitation, or receipt of any rebate that is unlawful under the provision of this Act;

(2) the fact that this policy has been promulgated recently to each owner, officer, employee, and agent thereof;

(3) the details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and

(4) a policy of full cooperation with the Commission in its efforts to end those illegal practices.

[Failure to file a certification shall result in a civil penalty of not more than $5,000 for each day the violation continues.] *Whoever fails to file a certificate required by the Commission under this subsection is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues.*

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98TH CONGRESS
2d Session

SENATE

REPORT
98-656

COMMERCIAL SPACE LAUNCHES

OCTOBER 3 (legislative day, SEPTEMBER 24), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 3942]

The Committee on Commerce, Science and Transportation, to which was referred the bill (H.R. 3942) to facilitate commercial space launches, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

The purpose of this bill is to establish a framework within which expendable launch vehicles (ELVs) and their associated facilities and launch services may be licensed for commercial launches. This legislation also designates the Department of Transportation (DOT) as the lead Federal agency to facilitate and expedite the issuance and transfer of commercial space launch licenses.

BACKGROUND AND NEEDS

In May 1983, the President announced the Government's support in facilitating and encouraging commercial launch activities of ELVs by the private sector. This policy applied to ELVs previously developed for U.S. Government use as well as new space launch systems developed specifically for commercial applications, and was consistent with the President's 1982 National Space Policy which designates the Space Shuttle as the Nation's primary space launch system.

To implement these policy decisions, in November 1983, the President designated DOT as the Federal Government's lead agency for commercial launch activities. This decision was followed

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by the formal signing in February 1984, of Executive Order 12465, which directed DOT to act as the focal point within the Federal Government for private sector space launch contacts and to facilitate the process for commercial launch operators of identifying and satisfying the related requirements and regulations of other Federal agencies concerning commercial space activities.

Since this policy first announced in 1983, the Committee on Commerce, Science, and Transportation has continued to believe that an assertive Congressional role in this initiative is warranted. The Committee's fiscal year 1984 NASA authorization supported the President's policy and required the Senate and House authorization committees for the National Aeronautics and Space Administration (NASA) to approve any proposed policy or decision to commercialize ELVs. In May 1984, this Committee and the House Science and Technology Committee approved the first such agreement.

While the Committee believes that there has been no lack of commitment by DOT to implement the provisions of Executive Order 12465, a change in administrations could lead to a de-emphasis or a modification of this policy. A congressional mandate, via legislation, would eliminate or reduce the possibility of any arbitrary redirection, restructuring, or abandonment of this initiative.

Legislation is important also for its role in developing a favorable investment climate. For private sector investors who are interested in pursuing commercial ELV activity, a legislative commitment could be a critical element in any decision by the private sector to undertake such a venture.

Finally, because this initiative has foreign policy, national security, safety of property, and health and safety implications, it is important that the Congress indicate its policy preferences and give additional direction to this important activity. The use of national launch facilities, the privatization of government launch systems, and the implications for existing U.S. international obligations are issues that deserve careful attention. The Committee believes that Congress should address these and other important issues and authorize the licensing of commercial launch and launch operation activities.

LEGISLATIVE HISTORY

S. 2931 was introduced by Senators Trible, Gorton, Heflin, Inouye, Riegle, Hollings, Kasten, Matsunaga, Stevens, Packwood, Ford, and Kassebaum on August 9, 1984. S. 2931 was the subject of a hearing before the Committee's Subcommittee on Science, Technology, and Space on September 6, 1984. Testifying at this hearing were the Director of the Office of Commercial Space Transportation of DOT, representatives of NASA, and members of the commercial space launch industry.

On October 2, 1984, the Committee ordered reported H.R. 3942 (the House companion bill, which had been referred to the Committee on June 7, 1984). The reported bill is an amendment in the nature of a substitute, and is compromise legislation developed by the Committee and the House Committee on Science and Technology.

SUMMARY OF MAJOR PROVISIONS

H.R. 3942, the Commercial Space Launch Act, promotes commercial space activity by giving the Secretary of Transportation the exclusive authority to issue licenses for commercial space launches and launch operations and by encouraging the use of Government launch services and the sale of excess launch property at reasonable prices.

All Government launch activities are exempt from the provisions of this bill.

In creating a one-stop licensing process for commercial space launch activities within DOT, H.R. 3942 does not abrogate or repeal any existing Federal law or requirement. The act does instruct the Secretary to consult with the other Federal agencies whose existing authority applies to launch or launch operation activities and to establish procedures that expedite the processing of applications for commercial launch and launch operation licenses. At the same time, the consultation requirement will permit the Secretary and the involved Federal agencies, to the extent permitted by law, to revise and review their regulations and procedures to eliminate unnecessary regulatory obstacles to the development of commercial launch operations and to ensure that those regulations and procedures found essential are administered as efficiently as possible. H.R. 3942 is consistent with Executive Order No. 12465 on this matter.

Nothing in H.R. 3942 is meant to affect existing payload licensing authority, in particular the authority of the Federal Communications Commission under the Communications Act of 1934 or the authority of the Secretary of Commerce under the Land Remote Sensing Commercialization Act of 1984. Pursuant to the act, the Secretary may neither require a recertification process nor review the action of another agency to issue a payload license, authorization or permit. H.R. 3942 does address payloads to the extent that an applicant must be able to identify the payload and have obtained the necessary payload license to obtain a launch license. In the case of a payload where a license, authorization or permit is not required, the Secretary is granted a broader authority to ensure that the payload does not jeopardize public health and safety, safety of property, or any national security interests or foreign policy interests of the United States.

The Commercial Space Launch Act would require any person engaged in non-Government launch operations in the United States to obtain a license pursuant to the terms and conditions, rules and requirements established by the Secretary in consultation with other Federal agencies. Certain U.S. citizens, as defined in section 4 of the bill, engaged in non-Government launch operations outside the United States would require a license pursuant to the terms and conditions of section 6(a) of the act.

This bill authorizes the Secretary to issue or transfer a license for launch activities to the extent such activities are consistent with the public health and safety, safety of property, and national security interests and foreign policy interests of the United States and to the extent the necessary payload, licenses, authorizations or permits have been obtained. The Secretary may waive the applica-

tion of any requirement within section 8 for a license of the Secretary determines that such waiver is in the public interest and will not jeopardize the public health and safety, safety of property, or any national security interest or foreign policy interest of the United States.

To ensure a stable regulatory environment and to prevent unnecessary regulatory delays, the bill instructs the Secretary to make a determination on any license application not later than 180 days after receipt of such application. To ensure adherence to this standard, the Secretary is instructed to notify any applicant of any pending issues after 120 days. This requirement should permit an adequate opportunity for any applicant to provide the necessary information or documentation to resolve any outstanding issues.

The bill authorizes the Secretary to suspend, revoke or terminate any license and/or launch activity immediately, unless otherwise specified, if the Secretary finds that the licensee has substantially failed to comply with any requirement of the act, license, or any regulation or if such action is required to protect public health and safety, safety of property, or national security interests or foreign policy interest of the United States. To assist in determining compliance with the license, the Secretary is permitted to place Federal officers, employees, or other individuals, including contractor personnel, at any launch site, production facility or assembly site used by a contractor of the licensee.

The bill further promotes commercial space launch activities by authorizing the Secretary to facilitate and encourage the acquisition of Government launch property and Government launch services by the private sector.

The bill establishes a minimum level of liability insurance, to be determined by the Secretary in consultation with the Attorney General, as a requirement for a license and authorizes the Secretary to enforce the act. The Secretary's enforcement authority may be delegated by the Secretary to any officer or employee of DOT or, with the approval of the head or another agency, of any officer or employee of such agency. A broader consultation requirement is established in section 20 where the Secretary is instructed to consult with the State Department, Department of Defense and other appropriate Federal agencies in order to carry out the provisions of the act.

Section 21 recognizes the need to preempt State laws, rules, regulations, standards, or orders "inconsistent" with the act, and section 22 establishes the reporting requirements.

The bill authorizes appropriations of $4 million for fiscal year 1985.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1984.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared a revised cost estimate for H.R. 3942, the Commercial Space Launch Act, as ordered reported by the Senate Committee on Commerce, Science and Transportation, October 2, 1984. This estimate supersedes the one prepared on September 28, 1984. That estimate was based on an earlier version of the bill provided by the Committee staff.

CBO estimates that activities authorized by this bill will cost approximately $4 million in 1985. These costs may be offset by any reimbursements collected from the lease or sale of government launch facilities or equipment. No estimate of the magnitude of these reimbursements can be made. In addition, some activities are currently being conducted under Executive Order 12465. This will further reduce the net budget impact.

The bill requires that any individual who desires to launch space vehicles in the United States receive a license from the Secretary of Transportation. In addition, no one possessing a license can launch a payload unless the payload complies with all requirements of federal law. The bill also allows the lease or sale of launch facilities of the United States to the private sector. The agency providing the facilities shall establish and collect reimbursements for the use or acquisition of these facilities. The amount of the reimbursement in the case of sales shall be the fair market value of the property. In the case of temporary use, reimbursement shall equal the direct cost incurred by the United States. The bill authorizes the appropriation of $4 million in 1985.

Enactment of this bill will result in no costs to state or local governments. If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The legislation gives the Secretary of Transportation the exclusive licensing authority for commercial launch and launch operations and will consolidate the existing regulations and requirements for the launch of a launch vehicle or the operation of a launch site. The act should reduce the regulatory burden for commercial launch operators. The authority of the Secretary to issue additional requirements and regulations conforms with the Committee's desire to streamline the commercial launch and launch operation process and to facilitate compliance with the required regulations.

Number of persons covered

The Committee notes that the proposed legislation will affect a very small number of firms. There are presently three to five companies whose commercial space launches could be licensed by DOT pursuant to the enactment of H.R. 3942. These companies range from an existing aerospace firm to newer, fledgling companies that would operate existing expendable launch vehicle systems or off-the-shelf technologies.

Economic impact

H.R. 3942 should not increase the economic impact of the regulations that are presently applied to commercial space launches and launch operations. The enactment of H.R. 3942 may, in fact, reduce economic impact of compliance with these existing regulations by streamlining the compliance process and by possibly eliminating any duplicative or unnecessary requirements.

In addition, the legislation would provide for a more stable regulatory environment than that which currently exists under Executive Order No. 12465 and would encourage the acquisition of Government launch property and the utilization of Government launch services within a reasonable pricing framework. This bill should help stimulate the emergence of a vibrant commercial space launch industry in the United States and should create new job opportunities and provide additional tax revenue to the U.S. Treasury.

Privacy

Any applicant for a license pursuant to this act must agree to give the Secretary of Transportation the authority to inspect any facilities or activities associated with the launch and launch operation to determine compliance with the license and to protect public health and safety, safety of property, and national security interests and foreign policy interests of the United States. In addition, the act requires compliance with certain disclosure exemptions of the Freedom of Information Act (relative to business and trade secrets) and of certain information designated as confidential.

Paperwork

Since H.R. 3942 calls for DOT to streamline and facilitate the process of complying with the applicable federal regulations for commercial launch and launch operations licenses, the Committee expects a reduction in paperwork requirements related to this activity. DOT must submit to Congress an annual report of its activities relative to H.R. 3942 for the next 5 years. However, the inclusion of a sunset requirement on this activity was meant to preclude any unnecessary paperwork once the Committee fully understood operation of the licensing process and adherence to the legislation. An additional one-time only report is required by the Committee. This latter report should not prove onerous since DOT has been working on this report pursuant to an instruction in Executive Order No. 12465 for nearly 6 months.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The first section of the bill provides that this act may be cited as the "Commercial Space Launch Act".

Section 2. Findings

This section affirms that the U.S. private sector has the capability to provide commercial expendable launch vehicle (ELV) services. This section also notes that the Government can create a climate conducive to the development and utilization of such capability of establishing stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied and by facilitating the acquisition of Government-developed space technology by the private sector. Government supervision of private launch activities through regulation is necessary to ensure compliance with U.S. international obligations and to protect the public health and safety, safety of property, and national security interests and foreign policy interests.

Section 3. Purposes

The purposes of this act are to:

(1) promote economic growth by encouraging the private sector to provide launch services and utilize space for peaceful purposes;

(2) encourage a U.S. ELV industry by simplifying and expediting the issuance of commercial launch licenses and by facilitating the commercial utilization of Government-developed ELV technology; and

(3) designate a single agency (DOT) to oversee commercial launch operations and issue licenses authorizing such activities.

Section 4. Definitions

Section 4 of the bill defines several terms, including "United States citizen." Under this bill, "United States citizen" means:

(1) any individual who is a citizen of the United States;

(2) any corporation or other business entity organized in the United States; or

(3) any corporation or other business entity which is organized in a foreign country and is controlled by an individual or entity described in subparagraphs (A) and (B) of section 4(11)(C) of this bill. This definition of "United States citizen" is significant because of concerns that exist as to the extent of U.S. jurisdiction and control over launch activities, the extraterritoriality implications of licensing launches and launch operations in foreign nations, and liability considerations of commerical launch activities.

The Committee has omitted from the definition of "launch vehicle" any reference to "tooling" of a launch vehicle and items used in the "manufacture" of a launch vehicle. The Committee is aware that the "tooling" of a launch vehicle and items used in the "manufacture" of a launch vehicle may involve tools and processes that have multiple uses and may be used for Government activities as

well as for private ELV activities. Since the Federal Acquisition Regulations lay out specific guidelines for mixing Government and private activities, the Committee believes that it is inappropriate to include these items in the statutory definition of "launch vehicle." Imposing a separate rule for ELVs could introduce confusion, additional paperwork, and coordination problems, and could contravene the existing statutory language.

Concerning the definition of a "launch," the Committee has made no reference in this definition to the *commerical* nature of a launch. While the Committee believes that the act currently provides adequate supervision for all *non-Governmental* (commercial or noncommercial) space launches, the Committee currently envisions that, at least in the near term, launches subject to the provisons of the act will only be commercial in nature. However, the Committee also recognizes that other types of non-Governmental space launches, such as those of a university consortium, could eventually occur. A "university" space launch would not be commercial in the true sense of an activity with a profit motive, but could be non-Governmental and thereby be subject to Federal supervison as prescribed in the act. Since the Committee does not envison this type of noncommercial, non-Governmental launch as one likely to occur in the near term, the definition of "launch" infers a non-Governmental, commercial launch.

While the Committee has intentionally excluded any reference to upper stages in the definitions of "launch vehicles" and "payload" and has not made any provisions in the act to license upper stages, the Committee recognizes that the question of upper stages is an issue that may warrant additional study in the future. Our Nation's current upper stage capabilities have been in question during the past year. Given these uncertainties and given any unforseen roles that upper stages might have in future ELV systems, the Committee believes that upper stages, relative to the licensing of commercial space launches, may warrant future examination.

Section 5. General responsibilities of the Secretary and other agencies

This section outlines the responsibilities of the Secretary of Transportation and other appropriate Federal agencies concerning implementation of the act.

Subsection (a) assigns the responsibility for carrying out this act to the Secretary. The Secretary is directed to consult with other appropriate agencies in fulfilling these responsibilities.

Subsection (b) directs Federal agencies to assist the Secretary in carrying out the act, to the extent permitted by law, and as necessary.

Section 6. Requirement of license for private space launch operations

Section 6 of the act addresses the requirements of a license for private space launch operations.

Section 6(a)(1) states that in order for any person to launch a launch vehicle or operate a launch site within the United States, that person must have a license issued or transferred under this act.

Section 6(a)(2) states that no U.S. citizen described in subparagraph (A) or (B) of section 4(11) may launch a launch vehicle or operate a launch site outside the United States, unless that citizen has a license issued or transferred under this act.

Section 6(a)(3)((A) provides that a U.S. citizen, as described in subparagraph (C) of section 4(11) (a foreign subsidiary whose controlling interest is held by a U.S. national) must have a license to launch a launch vehicle or operate a launch site which is both (1) outside the United States and (2) outside the territory of any foreign nation—on the high seas—unless there is an agreement in force between the United States and a foreign nation which provides that the foreign nation will exercise jurisdiction over the launch or the operation of a launch site. If such an agreement were in place, a U.S. citizen would not require a license.

Section 6(a)3)(B) (i) and (ii) provide that a U.S. citizen as described in subparagraph (C) of section 4(11) (a foreign subsidiary whose controlling interest is held by a U.S. national) does not require a license to launch a launch vehicle or operate a launch site in the territory of a foreign nation unless there is an agreement in force between the United States and such foreign nation which provides that the United States will exercise jurisdiction over such activity. If such an agreement were in place, a U.S. citizen would require a license.

The Committee believes that the licensing requirements, as prescribed in section 6(a) with respect to any activities outside the United States, provide, to the greatest extent possible, licensing coverage that is consistent with international law and the international convention on liability. In establishing these requirements, the Committee gave serious consideration to the extent of U.S. jurisdiction and the extent of U.S. liability for launch-related activities pursuant to international law and international obligations. Section 6(a), therefore, is intended to ensure comprehensive coverage of the licensing regime to the fullest extent permitted. Accordingly, section 6(a)(1) provides for U.S. jurisdiction over all activities in U.S. territory. In addition, with respect to activities of U.S. nationals and corporations, section 6(a)(2) provides for U.S. jurisdiction over activities not only in U.S. territory but also on the high seas and in international airspace and foreign territory.

Finally, with respect to activities of foreign subsidiaries in which U.S. nationals have a controlling interest, section 6(a)(3) would provide for U.S. jurisdiction over (and would require a license for) activities on the high seas or in international airspace.

Section 6(b)(1) states that the holder of a license under this act may not launch a payload unless that payload complies with all regulations of Federal law that relate to the launch of such payload. Furthermore, in the case where a Federal license, authorization, or permit is required for a payload, the Secretary need only ascertain that this license, authorization, or permit has been obtained.

The Committee notes that the only class of payloads currently authorized or licensed for launch by the Federal Government are communications satellites and land remote sensing satellites. These payloads are authorized or licensed by the FCC and the Department of Commerce, respectively. The Committee recognizes that a

regulatory process already exists for communications satellites and is aware of the fact that the Department of Commerce is in the process of implementing a regulatory regime for land remote sensing satellites, pursuant to the Land Remote-Sensing Commercialization Act of 1984. Therefore, the Committee believes that a duplicative process exercised by DOT would be unnecessary.

The Committee recognizes that the Orders and Authorizations of the FCC are the official certification for the launch of a communications satellite. Therefore, no separate documentation or certification by the Secretary of Transportation will be required.

In order to address the procedural time lag that may occur between the FCC's open meeting in which authorization to launch a communications satellite is adopted and the time in which the actual authorization is written and released, the Committee recognizes that the press release or other public notice of Commission action is sufficient notification that the communications satellite in question has met all regulations of Federal law that relate to the launch of a payload.

In notifying DOT of the FCC's authorization to launch a communications satellite, the Committee notes that the transmittal of the authorization to launch by the FCC is appropriate. The bill reported here is intended to minimize the burden on agencies, such as FCC, DOT, and on those launching payloads. The Committee, therefore, directs DOT to implement the regulations with this goal in mind.

The procedures outlined above are consistent with the intent of the bill that DOT is notified of the FCC's authorization to launch a communications satellite the Department of Commerce's authorization to launch a remote-sensing satellite as expeditiously as possible.

Section 6(b)(2) states that if no payload license, authorization, or permit is required to certify or approve a payload for launch under this act, the Secretary may prevent the launch of this payload if the Secretary determines taht the launch of this payload would jeopardize the public health and safety, safety of property, or *any* national security interest or foreign policy interest. The Committee recognizes that there may eventually be payloads for which there are no Federal certification or approval processes. While this bill does not intend to license payloads, the Committee recognizes that the Secretary has a certain responsibility concerning the launch of a payload for which there is no Federal certification process, such as exists for communications satellites. Therefore, the Committee believes that, in the absence of any Federal certification process for a payload, the Secretary should have the responsibility of assessing the risks associated with the launch of this payload and, if necessary, preventing the launch of the payload.

Section 6(c) provides that no person must obtain, except from the Secretary, a license, approval, waiver, or exemption for the launch of a launch vehicle or the operation of a launch site. This confers exclusive authority on the Secretary to issue or transfer licenses for the launch of a launch vehicle or the operation of a launch site. Subsection (c) also recognizes that FCC has certain licensing authority relative to the telemetry and command/destruct components of a launch vehicle and to the authorization and approval of

communications satellite payload licenses. As stated in section 6(c)(3), the Committee does not intend for the act to, in any way, effect authority of the FCC, as prescribed in the Communications Act of 1934, nor does it intend that the act give the Secretary the authority to override or modify any decision by the FCC to authorize the launch or operations of a communications satellite. Similarly, the Committee recognizes that the Department of Commerce has certain licensing authority with respect to land remote-sensing satellites. The Committee does not intend for the act to affect, in any way, this authority of the Department of Commerce, as prescribed in the Land Remote-Sensing Commercialization Act of 1984 concerning land remote-sensing satellite payload licenses.

Section 7. Authority to issue and transfer licenses

This section authorizes the Secretary to issue or transfer a license for the launch of one or more launch vehicles or for the operation of one or more launch sites. To receive such a license, the applicant must meet the requirements under section 8 of the act, and the launch activity must be consistent with the public health and safety, safety of property, national security interests, and foreign policy interests of the United States. The Committee expects that for an applicant to obtain approval for a launch license, the applicant must identify the mission, the technical capabilities of the launch vehicle, and the payload to be launched aboard the launch vehicle.

Section 8. Licensing requirements

This section establishes the regulatory regime for private launch and launch operation activities.

Subsection (a) provides that all Federal laws and regulations which currently apply to the launch of a launch vehicle or to the operation of a launch site will be required for a license for such activity. However, if in consultation with the appropriate agencies, the Secretary determines that any of these existing requirements is no longer necessary to protect the public health and safety, safety of property, and national security interests and foreign policy interests of the United States, then the Secretary may provide that that requirement is no longer a condition for a license. The Committee encourages the Secretary to use this authority, as appropriate, to streamline the licensing process of the act and to eliminate any duplicative or unnecessary requirements for the launch of a launch vehicle or the operation of a launch site. The Committee expects that the consultations between the Secretary and the appropriate agencies concerning the retention of existing requirements will be reasonable and good faith consultations. Should these consultations prove unproductive, the Committee expects the Secretary to have the ultimate authority in establishing the regulatory framework.

Subsection (b) authorizes the Secretary to prescribe additional licensing requirements that may be necessary to ensure the public health and safety, safety of property, and national security interests and foreign policy interests of the United States. The Committeee recognizes that existing regulations and laws may not addresss all of the present activities related to the launch of a launch vehi-

cle or to the operation of a launch site. Similarly, the Committee recognizes that additional requirements may be necessary to meet the requirements and considerations of future launch technologies and activities and new classes of payloads that presently do not exist.

Subsection (c) authorizes the Secretary to waive any requirement for a license under this section if the Secretary determines that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, or any national security interest or foreign policy interest of the United States.

Section 9. License application and approval

Section 9 addresses the license application and approval process.

Subsection (a) allows any person to apply for the issuance or transfer of a license under this act and directs the Secretary to expedite the review of the applications and to reduce the regulatory burden for the applicants.

Subsection (b) authorizes the Secretary to issue or transfer a license if the Secretary determines that the applicant complies and will continue to comply with the requirements of the act. This subsection also allows the Secretary to make an on-site verification of the launch and operation of the launch site to ensure compliance with the Act. Finally, the Secretary is directed to make a determination on each application within 180 days of receipt of the application. If the Secretary has not made a determination within 120 days of receipt of the application, the Secretary must inform the applicant of any pending issues. If the Secretary does not render a determination on an application within 180 days of receipt of the application, the Committee does not expect the licensee to assume that the application has been approved. The Committee expects the Secretary to make every effort possible to comply with the 180-day determination period. Furthermore, the Committee expects to be kept informed as to the Secretary's ability to comply with the 180-day determination period. Also, the Committee encourages the Secretary to give applications expeditious treatment so that applicants may compete effectively in the world marketplace.

Subsection (c) prohibits the disclosure by the Secretary, any other Government officer or employee, or any party to a contract entered into under this act, of any information provided by a license applicant which qualifies for exemption under the Freedom of Information Act as a business or trade secret. The same restrictions on information disclosure apply to information designated as confidential by the person or agency furnishing the information. Restrictions on the disclosure of qualified information may be relaxed only if the Secretary determines that the withholding of this information is contrary to the public or national interest.

Section 10. Suspension, revocation, and modification of licenses

Subsection (a) provides that the Secretary may suspend or revoke a license if the Secretary determines that the licensee has substantially failed to comply with the act, the license, or applicable regulations. The Secretary may also suspend or revoke such license if such an order is necessary to protect the public health and safety,

safety of property, or any national security interest or foreign policy interest of the United States.

Subsection (b) provides that, upon application by the licensee or on the Secretary's own initiative, the Secretary may modify the license if the Secretary determines that the modifications comply with the requirements of this act.

Subsection (c) provides that, unless otherwise specified by the Secretary, any order by the Secretary to suspend, revoke, or modify a license will become effective immediately and will continue in effect during any judicial or administrative review of such action.

In subsection (c), the Committee has provided the Secretary with discretionary authority to delay an order to suspend, revoke, or modify a license. The Committee recognizes that the immediate implementation of such an order might place a licensee at a financial disadvantage, which in some cases may be unwarranted, inappropriate, or detrimental to the licensee. Therefore, the Committee expects the Secretary to take into consideration, before rendering such an order, the nature and severity of any infraction or noncompliance relative to the act, the license, or applicable regulation. If the infraction or noncompliance is minor, and if the licensee can correct the infraction or noncompliance within a reasonable period of time after notification by the Secretary of the infraction or noncompliance, the Committee would expect the Secretary to delay the order to suspend, revoke, or modify. In this case, this "grace" period would allow the licensee a reasonable period of time to correct the infraction or noncompliance so that the licensee will not be needlessly disadvantaged by such an order.

Section 11. Emergency orders

Subsection (a) allows the Secretary to terminate, prohibit, or suspend immediately any launch or operation of a launch site licensed by the Secretary, if the Secretary determines that the licensed activity is detrimental to the public health and safety, safety of property, or any national security interest or foreign policy interest of the United States.

The Committee has the chosen standard "is detrimental to" for an emergency order to indicate the Committee's sensitivity to the public health and safety, safety of property, national security interests and foreign policy interests of the United States. The Committee recognizes this standard will allow the Secretary to terminate, prohibit, or suspend more easily a licensed activity if there is a concern that the licensed activity could harm any public health and safety, safety of property, national security interest or foreign policy interest of the United States. Furthermore, the Committee recognizes that an emergency order may be implemented due to concerns that may relate to the launch vehicle or its payload.

Subsection (b) states that any terminaton, prohibition, or suspension issued by the Secretary becomes effective immediately and continues in effect during an administrative or judicial review of the order.

Section 12. Administrative and judicial review

Section 12 provides the administrative and judicial review mechanisms for this Act.

Subsection (a) provides license applicants and license holders administrative review in accordance with section 554 of title 5, United States Code, of any decision of the Secretary to issue, transfer, deny the issuance or transfer of, suspend, revoke, or modify a license under this act, or terminate, prohibit, or suspend any launch or launch operation licensed by the Secretary.

Subsection (b) provides that final decisions under this section are subject to judicial review in accordance with chapter 7 of title 5, United States Code. It is the Committee's intention that a decision of the Secretary to prevent the launch of a payload under section 6(b)(2) is also subject to such judicial review.

Section 13. Regulations

Section 13 provides the Secretary general authority to issue regulations necessary to implement this act, after notice and comment in accordance with section 553 of title 5, United States Code.

Section 14. Monitoring of activities of licensees

Section 14 authorizes the Secretary to monitor the activities of licensees.

Subsection (a) requires licensees under this act to allow and to cooperate with Federal officers or employees authorized by the Secretary to observe licensed operations, including launch sites, production facilities or assembly sites used by a contractor of the licensee in the produciton or assembly of a launch vehicle and in the integration of a payload with its lauch vehicle. Such observance shall only be that considered necessary to determine compliance with a license issued under this act.

The Committee recognizes that qualified inspectors would necessarily have very unique skills and may not easily be found within the available Federal Government work force. To the extent necessary and to the extent provided in advance in appropriation acts, subsection (b) permits the Secretary to contract with an individual or entity to carry out all or part of the involved monitoring activities. If such a contractual service agreement is entered into, the Committee would advise the Secretary to take every necessary precaution to (1) ensure enforcement of section 6 of the bill and (2) protect againt any possible conflict of interests between the contracted inspectors and the commercial launch operator.

Section 15. Use of Government property

Section 15 addresses the use and procurement of Government launch property and/or launch services.

Subsection (a) authorizes the Secretary to take actions as may be necessary to facilitate and encourage private sector acquisition by lease, sale, transaction in lieu of sale, or other means of Government launch property which is excess or is otherwise not needed for public use and launch services that are not needed by the Government.

Subsection (b) of this section: (1) establishes the amounts of reimbursement that should be collected from any person who acquires launch property or launch services of the United States; and (2) gives the Secretary the authority to collect such reimbursements with the consent of the agency that (A) furnishes such launch prop-

erty or launch services and (B) establishes the amount of the reimbursement in consultation with the Secretary.

In drafting this subsection, the Committee was aware of the fact that different Federal agencies have differing degrees of authority regarding the lease, sale, transaction in lieu of sale, or otherwise of launch property or launch services, as well as different applicable terms and/or conditions. The Committee, therefore, crafted language that should remedy the concerns of the Secretary as well as those of a particular Federal agency that has the authority to establish the amount of reimbursement but not the authority to collect such reimbursement. Nothing in the subsection is meant to affect in any way the existing authority of any Federal agency to establish and/or collect reimbursements for the lease, sale, transaction in lieu of sale, or otherwise, of launch property or launch services of the United States.

In the case of a sale or a transaction in lieu of sale of launch property (the Federal Government retains owership and title in a transaction in lieu of sale) which is excess or is otherwise not needed for public use, the Committee recommends that the amount of reimbursement be established by the appropriate agency in consultation with the Secretary in an amount equal to the fair market value. The Committee recognizes the inexactness of the term "fair market value." The Committee, however, intends this term to mean the value of the item(s) on the open market subject to two constraints:

1. all sales should guarantee a reasonable return to the Federal Government; and
2. the Federal Government should provide no direct subsidies.

In the case of any other type of acquisition of launch property or any type of acquisition of launch services which are otherwise not needed, the Committee recommends that the amount of reimbursement be established by the appropriate agency in consultation with the Secretary in an amount equal to the direct costs incurred by the United States. In the case of launch property, direct costs include any specific wear and tear or damage to the launch property or the launch site; whereas in the case of launch services, direct costs are the salaries of U.S. civilian and contractor personnel applied in a manner consistent with Department of Defense Directive No. 3200.11 issued April 18, 1984—"Major Range and Test Facility Base."

In order to ensure that the pricing policy for launch property and launch services is compatible with the goal of encouraging a viable commercial ELV industry, the Committee directs the Secretary, or the Secretary's designee, to be an active participant in negotiations, in accordance with section 25(b), for launch property and launch services.

The Committee notes that the acquisition of launch property and launch services is not meant to conflict with national security requirements or essential government activities. In determining what property and/or services are not needed for public use and can be made available to facilitate commercial launch activities, the Committee recommends that the Secretary consult with the appropriate agencies.

Reimbursements and proceeds from payments are to be deposited in the general fund of the Treasury. Payments for launch property other than launch property that is excess and launch services (including utilities) furnished by an agency are to be credited to the relevant appropriation account of that agency. Consistent with provisions of existing law, payments received from the sale of launch property which is excess would remain in the general fund of the Treasury.

Subsection (c) authorizes the Secretary to establish requirements as may be necessary to protect the Government and its employees from liability, loss, or injury resulting from activities licensed under this act that involve Government facilities and personnel. The Committee intends for the Secretary's authority in subsection (c) to be discretionary and expects the Secretary to establish requirements only as appropriate and as necessary. When the Secretary establishes requirements for any one of the considerations in subsection (c), the Secretary is not required to establish requirements for all of the considerations in subsection (c).

Section 16. Liability insurance

Section 16 requires licensees under this act to have liability insurance in an amount determined by the Secretary, in consultation with the Attorney General and other appropriate agencies, which shall be at least in such amount as is considered by the Secretary to be necessary for such launch or operation, considering the international obligations of the United States.

Section 17. Enforcement authority

Section 17 authorizes the Secretary to enforce the provisions of the act.

Subsection (a) authorizes the Secretary to enforce this act and permits the Secretary to delegate the exercise of any enforcement authority to other agencies with their consent.

Subsection (b) authorizes the Secretary to make investigations, administer oaths, conduct inspections, and seize evidence in order to enforce the provisions of the act.

Section 18. Prohibited acts

Section 18 states that a violation of any requirement of this act, any regulation issued under this act, or any provisions of a license is unlawful.

Section 19. Civil penalties

Section 19 establishes the civil penalties for violations of the act and gives the Secretary the authority to recover civil penalties.

Subsection (a) indicates that any person found by the Secretary, after notice and opportunity to be heard on the record, to have committed a prohibited act as defined in section 18, is subject to a civil penalty imposed by the Secretary of up to $100,000 for each violation. The assessment of any such penalty shall be by written notice and is subject to appeal. This subsection also authorizes the Secretary to compromise, modify, or remit any civil penalty.

Subsection (b) directs the Secretary to seek enforcement of civil penalties in the appropriate district court of the United States in

any case where a person fails to pay a civil penalty assessed against that person after the penalty has become final or after final judgment has been entered in favor of the Secretary.

The Committee is aware of the fact that either the Attorney General or the Secretary would be appropriate designees to seek enforcement of civil penalties in the appropriate district court of the United States. Because of the overwhelming case load of the Attorney General and the precedent that exists in other Federal legislation such as the Clean Air Act, the Committee has decided to vest this authority in the Secretary.

Subsection (c) authorizes the Secretary to issue subpoenas and seek their enforcement in the appropriate district court of the United States.

Section 20. Consultation

Section 20 directs the Secretary to consult with appropriate Federal agencies regarding matters relating to the act.

Subsection (a) requires the Secretary to consult with the Secretary of Defense on all matters under this act affecting national security. The Secretary of Defense is directed to identify and notify the Secretary of any national security interests which are relevant to activities under the act.

Subsection (b) requires the Secretary to consult with the Secretary of State on all matters under this act affecting foreign policy. The Secretary of State is directed to identify and notify the Secretary of any foreign policy interests or obligations which are relevant to activities under this act.

Subsection (c) requires the Secretary to consult with Federal agencies, as appropriate, to carry out the provisions of this act.

Section 21. Relationship to other laws and international obligations

Section 21 describes the relationship of this act to other laws and international obligations.

Subsection (a) establishes the standard of "inconsistency." A State, or subdivision thereof, therefore, is permitted to adopt any law, rule, regulation, standard or order which is consistent with and is in addition to or more stringent than any requirement or regulation of this act. However, such law, rule, regulation, standard or order may not be inconsistent with the provisions of this act.

The Committee is extremely sensitive to the issue of States' rights. However, the Committee feels that it is necessary to preempt, to some degree, laws, rules, regulations, standards or orders enforced by a State or subdivision thereof when a Federal licensing regime is being established. The Committee, therefore, establishes the "inconsistency standard" for this act, a position that is consistent with the Committee's treatment of other transportation regimes.

Subsection (b) indicates that a launch vehicle or payload shall not, by reason of the launching of such vehicle or payload, be considered an export for purposes of any law controlling exports.

The Committee is aware of the fact that the launching of a launch vehicle is currently considered an export. The Committee also is aware that the principal reason launch vehicles receive this treatment is because the Federal Government lacked the "specific"

authority required to regulate such commercial launch vehicles when they emerged upon the scene. As a substitute for such "specific" authority, the International Traffic in Arms Regulations (ITAR) was used. (ITAR was designed to address the foreign policy and national security concerns of U.S. armament sales—not the licensing of commercial launch vehicles.) It is the Committee's intent that the Commercial Space Launch Act be the exclusive authority for the licensing of commercial space launch vehicles.

Subsection (c) exempts the launch or operation of a launch vehicle, or the operation of a launch site, or any other space launch activity carried out by the U.S. Government on behalf of the United States (such as the space shuttle operated by NASA or a similar activity carried out for a Federal agency) or any planning or policies relating to any such launch, operation or activity from the authority provided under this act, the requirements of this act, and any regulation promulgated under this act.

The inclusion of the phrase "on behalf of the United States" in section 21(c) is not meant to affect, in any way, the activities of the United States carried out by the Space Shuttle such as the launch of a foreign government satellite or a commercial satellite, whether the reimbursement for such activities is monetary or another kind of reimbursement. The phrase is meant to affect launch activities and launch operations carried out by commercial launch operators at public ranges.

Nothing in this act is meant to detract from or enhance DOT's role in the formulation of space policy within the Senior Interagency Group on Space and within the Cabinet Council on Commerce and Trade.

Subsection (d) requires the Secretary to carry out this act in a manner consistent with U.S. international obligations and to consider the applicable laws and requirements of any foreign country.

Section 22. Report

Section 22 establishes the reporting requirements for this act.

Subsection (a) directs the Secretary to submit a report to the Committee and the House Committee on Science and Technology 1 year after enactment, and annually thereafter for 4 years, which describes activities undertaken pursuant to this act, and which makes recommendations, including legislative proposals, to further commercial launch activities.

Subsection (b) directs the Secretary to submit a report to Congress by July 1, 1985, that identifies Federal statutes, treaties, regulations, and policies which may have an adverse effect on commercial launches. Such a report is consistent with the responsibilities of the lead agency in Executive Order No. 12465.

Section 23. Severability

Section 23 establishes the principle of severability for the act.

Section 24. Authorized appropriations

Section 24 authorizes appropriations of $4 million for fiscal year 1985 to implement this act.

The Committee realizes that the activities envisioned by this legislation already are being carried out pursuant to Executive Order

No. 12465 by the Office of Commercial Space Transportation in DOT and are being funded by monies from the account of the Office of the Secretary. The Committee, however, feels the newly created Office of Commercial Space Transportation warrants a separate authorization and that there should be a cap on the level of activity in fiscal year 1985.

The Commercial Space Launch Act will not increase outlays in fiscal year 1985.

Section 25. Effective date

Section 25 establishes the effective dates for various elements of the act.

Subsection (a) establishes an effective date 180 days after enactment, except for: the authority of the Secretary to issue regulations and to become involved with negotiations concerning reimbursements pursuant to section 15.

Subsection (b) indicates that section 15 of the act shall take effect on the date of enactment "except that nothing in this act shall affect any agreement, including negotiations which are substantially completed, relating to the acquisition of launch property or launch services of the United States entered into on or before the date of enactment of this act between the United States and any private party."

The Committee understands the word "agreement" in section 25(b) to encompass any agreement, contract or preliminary agreement that was entered into on or before the date of enactment. The Committee also understands that there is only one ongoing good faith negotiation that could be considered "substantially completed." This particular case involves NASA and a private party, and the Committee understands that there are very few issues left to be resolved in these negotiations before a final agreement is entered into regarding the privatization of the Atlas Centaur system.

Subsection (c) requires regulations to implement this act shall be promulgated by the Secretary not later than 180 days after the date of enactment.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported would make no change to existing law.

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Calendar No. 1326

98TH CONGRESS
2d Session

SENATE

REPORT
98-658

PUERTO RICAN PASSENGER SERVICE

OCTOBER 4 (legislative day, SEPTEMBER 24), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 89]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 89) a bill to permit the transportation of passengers between Puerto Rico and other U.S. ports on foreign-flag vessels when U.S.-flag service for such transportation is not available, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

H.R. 89 would allow passenger vessels not qualified to engage in the coastwise trade to transport passengers between ports in Puerto Rico and other ports in the United States until the Secretary of Transportation determines that passenger service is available on vessels qualified to engage in the coastwide trade.

BACKGROUND AND NEEDS

Puerto Rico, an autonomous political entity in voluntary association with the United States, is a beautiful Caribbean island resort. It is located 1,050 air miles from Miami. Its location and its island figuration limit access to the island to air and water travel, and common carriers of either variety are subject to statutory requirements that such services be provided only by U.S.-flag carriers.

Air travel presents no problem since American air carriers adequately serve Puerto Rico; however, the situation with marine transportation is quite different. The maritime cabotage laws prohibit the transportation of passengers on foreign vessels between

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ports or places in the United States—either directly or by way of a foreign port (46 App. U.S.C. 289). U.S.-flag passenger ships that receive an operating differential subsidy are subject to the same limitation (46 App. U.S.C. 1183(d)(3). These coastwide trade laws are made applicable to Puerto Rico by 48 U.S.C. 744. In addition, the Jones Act (section 27, Merchant Marine Act, 1920) has been interpreted as proscribing the carriage of passengers—as well as cargo—between U.S. ports on other than U.S.-flag, U.S.-built vessels.

No passenger vessel qualified to engage in the coastwise trade now transports passengers to Puerto Rico, and there has been no service on a regular basis since 1953. The ramifications of the coastwise trading laws are manifold, affecting individuals and the economy of Puerto Rico.

For the individual who cannot fly for medical reasons, either physical or psychological, the choices for leaving the island are severely restricted. These persons must resort to costly and time-consuming methods of travel by water. Because of the cabotage laws and the absence of coast-wise-qualified passenger service, the passenger cannot travel directly to the U.S. mainland.

One way to get to the mainland is via the Virgin Islands. (The Virgin Islands is exempt from the application of the U.S. coastwise laws by virtue of Executive Order 9170 issued by President Franklin D. Roosevelt under authority granted by 48 U.S.C. 1405c.) Ferry service to St. Thomas, VI is sporadic and takes a full day. Once in the Virgin Islands, the traveler must secure accommodations on board another vessel to the mainland, and such a vessel is not always immediately available. The voyage from St. Thomas generally takes 5 days or more. The return trip must be accomplished in much the same way in reverse. The traveltime alone is prohibitive; and, for a person with limited time, this method of travel may be impossible. The alternative is to remain at home.

The lack of passenger service also adversely affects the island's economy. The tourism industry has been a major force behind Puerto Rico's economic development. In fiscal year 1982, tourist expenditures constituted 5.4 percent of Puerto Rico's gross domestic product. The $381 million spent by visitors in 1982 created more than 48,000 jobs.

Because there is no U.S.-flag coastwise-qualified passenger service, the number of tourist dollars spent in Puerto Rico is limited. Non-coastwise-qualified vessels may and do stop at ports in Puerto Rico on their voyages. However, no passenger may embark on or terminate voyages touching other U.S. ports where coastwise trade is the primary purpose of the trip.

Nevertheless, some relief from the strictures of the coastwise laws has been afforded by the U.S. Customs Service. The Service has promulgated regulations that allow passengers traveling on noncoastwise-qualified vessels to temporarily disembark at ports in the United States—provided that the vessels and the passengers do not remain in port for more than 24 hours (19 C.F.R. section 4.80(a)).

The foreign-flag passenger vessels that serve Puerto Rico take advantage of this interpretation of the coastwise trading laws. Their passengers go ashore to sightsee or purchase souvenirs, and

the tourist business from this source has helped the Puerto Rican economy.

However, these regulations do not permit Puerto Rico to take full advantage of the passenger cruise business. Proponents of the bill contend that enactment of H.R. 89 would allow Puerto Rico to exploit the one-way cruise ship visitor market offered by fly-cruise packages. The fly-cruise tour works like this. The passenger takes a cruise from, for example, Miami; visits various Caribbean locations by ship; and flies back to Miami. Presently, a foreign cruise ship leaving Miami cannot debark passengers in Puerto Rico for a return flight to Miami. If H.R. 89 were passed, Puerto Rico could take full advantage of this lucrative tourist trade.

It has been estimated by the Puerto Rico Tourism Company that 80,000 new visitors would be attracted to Puerto Rico by these fly-cruise packages in the first year after enactment of this legislation. These 80,000 tourists can be expected to spend an average of $422 in Puerto Rico, thereby adding $34 million to the island's tourist recipts. This translates into a $59 million boost to the economy's total output and into the creation of 4,000 new jobs.

Opponents of the bill argue that the cabotage laws are designed to protect and promote the U.S.-flag Merchant Marine and should only be waived for national defense or other compelling reason. Proponents note that there are no coastwise-qualified passenger vessels serving Puerto Rico which need to be protected and that, under the circumstances, these restrictions serve only to harm Puerto Rican businesses and labor. Tourists from the United States have continued to take vacation cruises in the Caribbean on foreign-vessels. Because of the coastwise laws, however, these U.S. passengers cannot debark in Puerto Rico for an extended holiday; they are restricted to remaining on the island for not more than 24 hours. Consequently, the American tourist is encouraged by law and circumstances to spend the better part of his time and money in foreign ports. By enacting this bill, the American tourist would be freer to enjoy a cruise and an extended vacation in Puerto Rico, thereby increasing the potential for additional profits for American businesses. Another expected benefit is the enhancement of the U.S. balance of payments, since American tourists will be spending their money in Puerto Rico instead of predominantly in foreign island resorts.

The people of Puerto Rico—because of the nature of their island home, its location, and the law—are restricted in the methods of travel they have at their disposal. They are unable to utilize ground transportation to other points in the United States as people in the 48 contiguous States and Alaska can. Their economy is denied the full benefit of the passenger cruise tourist trade.

Legislative History

The Honorable Baltasar Corrada, Resident Commissioner of Puerto Rico, introduced H.R. 89 on January 3, 1983. The House Merchant Marine and Fisheries Committee, Subcommittee on Merchant Marine held a hearing on October 19, 1983 and reported the bill on January 26, 1984. The full House Merchant Marine and Fisheries Committee ordered H.R. 89 reported to the House on

April 11, 1984. The House passed the bill on a vote of 390 yeas to 25 nays on May 15, 1984.

H.R. 89 was referred to the Senate Committee on Commerce, Science, and Transportation on May 22, 1984. A hearing was held by the Subcommittee on Merchant Marine on August 3, 1984. Testimony in support of the bill was received from the bill's sponsor, the Honorable Baltasar Corrada; the Governor of Puerto Rico; the administrator of Puerto Rico Economic Development Administration; the executive director, Greater San Juan Committee; and the deputy director of the Puerto Rico Tourism Company. The executive director of the Puerto Rico Ports Authority submitted written testimony in favor of the bill. The administration stated its support in a letter dated August 1, 1984 from Jim J. Marquez, General Counsel of the Department of Transportation to the Chairman of the Committee.

Written testimony in opposition to the bill was received from the Seafarers International Union; the International Organization of Masters, Mates and Pilots; and the AFL-CIO Maritime Committee.

H.R. 89 was ordered reported with amendments by the Commerce Committee on October 4, 1984.

Committee Action

The Committee amendment modifies the last sentence of subsection (b)(1) and the last sentence of subsection (b)(2) to clarify that coastwise privileges granted to every owner or operator under the act shall expire on the 270th day following the Secretary's notification. The Committee amendment also modifies subsection (e) by eliminating language directing the Secretary to define the term "passenger vessel" and substituting a statutory definition. The combined effect of these amendments is intended to insure that one U.S.-passenger ship of similar size or offering service comparable to any foreign-flag vessel transporting passengers under this act will displace all such foreign-flag vessels.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 4, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 89, an act to permit the transportation of passengers between Puerto Rico and other United States ports on foreign-flag vessels when United States flag service for such transportation is not available. The act was ordered reported by the Senate Committee on Commerce, Science and Transportation, October 4, 1984. We

expect that enactment of H.R. 89 would result in no additional cost to federal, state, or local governments.

The act allows passenger vessels not qualified to engage in the coastwise trade to transport passengers between Puerto Rico and other ports in the United States, unless a vessel qualified to engage in the coastwise trade offers such service. H.R. 89 also establishes a three-tier system for vessels operating in the Puerto Rico passenger trade, so that U.S. flag ships not qualified to engage in the coastwise trade have priority over foreign flag vessels, and U.S. flag vessels qualified to engage in the coastwise trade have priority over both other categories.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of the XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

Under current law, the Federal Maritime Commission (FMC) has very limited statutory authority to regulate passenger ships. H.R. 89 leaves this authority unchanged. The U.S. Coast Guard inspects vessels operating in U.S. waters for health and safety purposes. H.R. 89 leaves this authority unchanged.

NUMBER OF PERSONS COVERED

Virtually all of the foreign-flag passenger vessels which would take advantage of this bill already call at one or more U.S. ports and are therefore subject to existing regulation.

ECONOMIC IMPACT

The economic impact of existing regulation is not changed by this bill.

PRIVACY

The bill does not affect the privacy of individuals.

PAPERWORK

No additional reporting requirements are imposed by this bill. Under certain circumstances the Secretary of Transportation has the burden of notifying vessel owners or operators of vessels transporting passengers under authority of the bill. It is estimated that the number of such notifications and the attendant paperwork burden would be exceedingly small.

SECTION-BY-SECTION ANALYSIS

Section (a)

This section provides that passengers may be transported on passenger vessels not qualified to engage in the coastwise trade be-

tween ports in Puerto Rico and other ports in the United States directly or by way of a foreign port, except as otherwise provided in the act.

Section (b)(1)

The service permitted by this act is required to be terminated under certain circumstances. The Secretary of Transportation shall notify the owner or operator of vessels transporting passengers under authority of this act upon a showing that a coastwise-trade-qualified vessel has obtained a certificate of financial responsibility for indemnification of passengers for non-performance of transportation from the FMC and is offering or advertising service between ports in Puerto Rico and other U.S. ports. Vessels operating under authority of the act would have 270 days from the time of notification by the Secretary in which to terminate their service. Under existing FMC procedures, it is possible for a coastwise-qualified vessel, including those under construction, to obtain a valid certificate, advertise service for up to 270 days prior to initiation of such service, and thus avoid or limit head-to-head competition with vessels transporting passengers under the authority of this act.

Section (b)(2)

This section establishes a preference for U.S.-flag subsidized or U.S.-flag foreign-built passenger vessels over foreign-flag vessels. The same procedures for determining when service is available and for terminating service that are contained in section (b)(1) apply here.

Section (c)

There are sometimes delays that prevent vessels from entering into service on the date intended. This section is necessary so that, if a delay does occur, vessels operating under authority for the act would be allowed to continue their operations for 90 days after the new vessel service begins. This 90-day extension applies both in cases where section (b)(1) and (b)(2) are invoked.

Section (d)

This section provides for reinstatement of that service which was displaced, if the more highly qualified service is abandoned.

Section (e)

This section defines "passenger vessel" the purposes of section (b)(1) and (b)(2) as any vessel of similar size or offering service comparable to any other vessel transporting passengers under authority of this act.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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